

MONTANA LEGISLATIVE HISTORY

Chapter 410 1997

Bill H _____ S 324 Original bill & history ☒ c

H. Committee on Human Services

Hearing Date(s) 3/14/97 ☒ c

_____ c

_____ c

_____ c

Date Out 4/07/97 ☒ c

S. Committee on Public Health

Hearing Date(s) 2/14/97 ☒ c

_____ c

_____ c

2/24/97 ☒ c

Did this bill originate in an interim committee? _____ Yes ☒ No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

2/15	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	REVISED FISCAL NOTE REQUESTED		
2/20	REVISED FISCAL NOTE RECEIVED		
2/20	REVISED FISCAL NOTE PRINTED		
2/22	2ND READING DO PASS AS AMENDED MOTION FAILED	23	27
2/24	MOTION FAILED TO TAKE FROM COMMITTEE & PLACE ON 2ND READING	24	26

SB 322 INTRODUCED BY GROSFIELD, ET AL. *LC1346 DRAFTER: EVERTS*

ESTABLISH ABANDONED MINE RECLAMATION AS A PRIORITY FOR
RECLAMATION AND DEVELOPMENT GRANTS

2/10	INTRODUCED		
2/10	FIRST READING		
2/10	REFERRED TO NATURAL RESOURCES		
2/10	FISCAL NOTE REQUESTED		
2/14	HEARING		
2/15	FISCAL NOTE RECEIVED		
2/17	FISCAL NOTE PRINTED		
2/20	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING DO PASS MOTION FAILED	24	25

SB 323 INTRODUCED BY HERTEL *LC0821 DRAFTER: COLHOUN*

PROHIBIT PREFERENTIAL AND DISCRIMINATORY PRACTICES OR
IMPAIRMENT OF ADJACENT LANDOWNER VESTED RIGHTS THROUGH
FURTHERANCE OF PUBLIC VOLUNTARY EASEMENT, VOLUNTARY
HUNTING ACCESS, AND OTHER LAND AND EASEMENT ACQUISITION
PROGRAMS

2/10	INTRODUCED		
2/10	FIRST READING		
2/10	REFERRED TO NATURAL RESOURCES		
2/12	FISCAL NOTE REQUESTED		
2/14	HEARING		
2/17	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/20	TABLED IN COMMITTEE		
3/03	MISSSED DEADLINE FOR 45TH DAY TRANSMITTAL DIED IN COMMITTEE		

SB 324 INTRODUCED BY ESTRADA, ET AL. *LC1086 DRAFTER: FOX*

PROVIDE FOR COVERAGE OF POSTMASTECTOMY CARE AS DETERMINED
BY AN ATTENDING PHYSICIAN AND PATIENT OR, FOR AN HMO, BY A
PRIMARY CARE PHYSICIAN, ATTENDING PHYSICIAN, AND PATIENT

2/10	INTRODUCED		
2/10	FIRST READING		
2/10	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/14	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASSED	50	0
2/24	3RD READING PASSED	49	1
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO HUMAN SERVICES & AGING		
3/14	HEARING		
3/26	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/07	2ND READING CONCURRED	81	19

4/07	3RD READING CONCURRED	82	17
	RETURNED TO SENATE WITH AMENDMENTS		
4/11	2ND READING AMENDMENTS CONCURRED	50	0
4/12	3RD READING CONCURRED AS AMENDED	48	0
4/18	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		
4/21	TRANSMITTED TO GOVERNOR		
4/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 410		
	EFFECTIVE DATE: 10/01/97		

SB 325 INTRODUCED BY CRISMORE, ET AL.

LC0679 DRAFTER: MITCHELL

PROHIBIT THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY FROM INSPECTING METALLIC AND NONMETALLIC NONCOAL MINES, OTHER THAN SAND AND GRAVEL OPERATIONS, AS LONG AS THE FEDERAL MINE SAFETY AND HEALTH LAWS ARE IMPLEMENTED AND ENFORCED IN MONTANA BY THE FEDERAL GOVERNMENT

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/13	FISCAL NOTE REQUESTED		
2/18	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/21	COMMITTEE REPORT—BILL PASSED		
2/24	2ND READING PASSED	48	2
2/25	3RD READING PASSED	45	5
	TRANSMITTED TO HOUSE		
3/03	FIRST READING		
3/03	REFERRED TO BUSINESS & LABOR		
3/17	REFERRED TO STATE ADMINISTRATION		
3/27	HEARING		
3/28	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/04	REVISED FISCAL NOTE REQUESTED		
4/04	2ND READING CONCURRED	88	11
4/05	3RD READING CONCURRED	66	34
	RETURNED TO SENATE WITH AMENDMENTS		
4/08	REVISED FISCAL NOTE RECEIVED		
4/09	2ND READING AMENDMENTS CONCURRED	50	0
4/09	REVISED FISCAL NOTE PRINTED		
4/10	3RD READING CONCURRED AS AMENDED	49	1
4/15	SIGNED BY PRESIDENT		
4/16	SIGNED BY SPEAKER		
4/16	TRANSMITTED TO GOVERNOR		
4/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 307		
	EFFECTIVE DATE: 07/01/98		

SB 326 INTRODUCED BY DEVLIN, ET AL.

LC1355 DRAFTER: KURTZ

ESTABLISH THE MONTANA GRASS CONSERVATION ADVISORY COMMITTEE

2/11	INTRODUCED		
2/11	FIRST READING		
2/11	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/11	FISCAL NOTE REQUESTED		
2/14	HEARING		
2/15	FISCAL NOTE RECEIVED		
2/15	FISCAL NOTE PRINTED		

(c) machinery and equipment used in canola seed oil processing facilities if:

(i) the operators of ~~such~~ *those* facilities employ a minimum of 15 full-time employees; and

(ii) a canola seed oil processing facility locates in the state of Montana after July 25, 1989.

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

(3) Class six property is taxed at 4% of its market value."

Approved April 28, 1997

CHAPTER NO. 410

[SB 324]

AN ACT PROVIDING FOR COVERAGE OF POSTMASTECTOMY CARE AS DETERMINED BY AN ATTENDING PHYSICIAN AND PATIENT OR, FOR AN HMO, BY A PRIMARY CARE PHYSICIAN, ATTENDING PHYSICIAN, AND PATIENT; PROVIDING FOR COVERAGE OF RECONSTRUCTIVE SURGERY FOLLOWING A MASTECTOMY; REQUIRING WRITTEN INFORMED CONSENT FOR PATIENTS RECEIVING TREATMENT FOR BREAST CANCER; CLARIFYING THAT THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT MUST OFFER COVERAGE FOR MAMMOGRAPHY EXAMINATIONS; AMENDING SECTIONS 33-22-101, 33-22-1827, 33-31-111, AND 33-35-306, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Postmastectomy care. Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, also the primary care physician, in consultation with the patient, to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer. This section also applies to the state employee group insurance program, the university system employee group insurance program, any employee group insurance program of a city, town, county, school district, or other political subdivision of the state, and any self-funded multiple employer welfare arrangement that is not regulated by the Employee Retirement Income Security Act of 1974.

Section 2. Coverage for reconstructive breast surgery after mastectomy. (1) Each group and individual disability policy, certificate of

insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for reconstructive breast surgery resulting from a mastectomy that resulted from breast cancer.

(2) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for all stages of one reconstructive breast surgery on the nondiseased breast to establish symmetry with the diseased breast after definitive reconstructive breast surgery on the diseased breast has been performed.

(3) For the purposes of this section:

(a) "mastectomy" means the surgical removal of all or part of a breast as a result of breast cancer;

(b) "reconstructive breast surgery" means surgery performed as a result of a mastectomy to reestablish symmetry between the breasts. The term includes augmentation mammoplasty, reduction mammoplasty, and mastopexy.

(4) Benefits for reconstructive breast surgery include but are not limited to the costs of prostheses and, under any contract providing outpatient x-ray or radiation therapy, benefits for outpatient chemotherapy following surgical procedures in connection with the treatment of breast cancer that must be included as a part of the outpatient x-ray or radiation therapy benefit.

Section 3. Written informed consent for breast cancer treatment.

(1) For the purpose of this section, "written informed consent" means an agreement in writing that is freely executed by the patient that certifies that full disclosure has been made to the patient about:

(a) the full range of efficacious medical treatment alternatives that may be viable, including surgical procedures relating to the removal of breast tissue, radiological or chemotherapeutic treatments or any other generally accepted medical treatment, or combinations of procedures and treatments;

(b) the advantages, disadvantages, risks, and descriptions of the procedures and treatments listed in subsection (1)(a); and

(c) aspects of recovery, including the options that are available for reconstructive surgery.

(2) Failure of a physician or surgeon to provide written informed consent as provided in subsection (1) constitutes unprofessional conduct.

Section 4. Section 33-22-101, MCA, is amended to read:

"33-22-101. Exceptions to scope. Parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-130 through 33-22-132, [sections 1 and 2], 33-22-243, and 33-22-304, do not apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance."

Section 5. Section 33-22-1827, MCA, is amended to read:

"33-22-1827. Benefits required in basic health benefit plan. (1) The basic health benefit plan must provide at least the following benefits:

(a) coverage for the services and articles required by 33-22-1521(2);

(b) coverage for mental health and chemical dependency required by Title 33, chapter 22, part 7; ~~and~~

(c) coverage for conversion of benefits required by 33-22-508 and 33-22-510 or by 33-30-1007; *and*

(d) coverage for mammography examinations required by 33-22-132.

(2) The small employer carrier may determine varying levels of deductibles, copayments, maximum annual out-of-pocket expenses, maximum lifetime benefits, and other financial cost-sharing arrangements with the insured that give the basic health benefit plan a lower benefit value than the standard health benefit plan.

(3) A basic health benefit plan provided by a health maintenance organization or a basic health benefit plan with a restricted network provision must provide a comparable level of benefits to those required by subsections (1) and (2), as determined by the benefit equivalency and benefit value."

Section 6. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws.

(1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter may not be considered to be practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) The provisions of this chapter do not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) The provisions of this section do not exempt a health maintenance organization from material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-701 through 33-3-704.

(6) The provisions of this section do not exempt a health maintenance organization from the requirements of [sections 1 and 2]."

Section 7. Section 33-35-306, MCA, is amended to read:

"33-35-306. Application of insurance code to arrangements. (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions of Title 33:

(a) Title 33, chapter 1, part 4, but the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is subject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) 33-3-308; ~~and~~

(d) Title 33, chapter 18, except 33-18-242; *and*

(e) *[sections 1 and 2].*

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 8. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [sections 1 and 2].

(2) [Section 3] is intended to be codified in Title 37, chapter 3, and the provisions of Title 37, chapter 3, apply to [section 3].

Section 9. Applicability. [This act] is applicable to all contracts issued or renewed on or after January 1, 1998.

Approved April 28, 1997

reestablish symmetry between the breasts. The term includes augmentation mammoplasty, reduction

1 mammoplasty, and mastopexy.

2 (4) Benefits for reconstructive breast surgery include but are not limited to the costs of prostheses
3 and, under any contract providing outpatient x-ray or radiation therapy, benefits for outpatient
4 chemotherapy following surgical procedures in connection with the treatment of breast cancer that must
5 be included as a part of the outpatient x-ray or radiation therapy benefit.

6
7 **NEW SECTION.** **Section 3. Written informed consent for breast cancer treatment.** (1) For the
8 purpose of this section, "written informed consent" means an agreement in writing that is freely executed
9 by the patient that certifies that full disclosure has been made to the patient about:

10 (a) the full range of efficacious medical treatment alternatives that may be viable, including surgical
11 procedures relating to the removal of breast tissue, radiological or chemotherapeutic treatments or any other
12 generally accepted medical treatment, or combinations of procedures and treatments;

13 (b) the advantages, disadvantages, risks, and descriptions of the procedures and treatments listed
14 in subsection (1)(a); and

15 (c) aspects of recovery, including the options that are available for reconstructive surgery.

16 (2) Failure of a physician or surgeon to provide written informed consent as provided in subsection
17 (1) constitutes unprofessional conduct.

18
19 **Section 4.** Section 33-22-101, MCA, is amended to read:

20 **"33-22-101. Exceptions to scope.** Parts 1 through 4 of this chapter, except 33-22-107,
21 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-130 through 33-22-132, sections 1 and 2,
22 33-22-243, and 33-22-304, do not apply to or affect:

23 (1) any policy of liability or workers' compensation insurance with or without supplementary
24 expense coverage;

25 (2) any group or blanket policy;

26 (3) life insurance, endowment, or annuity contracts or supplemental contracts that contain only
27 those provisions relating to disability insurance as:

28 (a) provide additional benefits in case of death or dismemberment or loss of sight by accident or
29 accidental means; or

30 (b) operate to safeguard contracts against lapse or to give a special surrender value or special

benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

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(b) coverage for mental health and chemical dependency required by Title 33, chapter 22, part 7;

~~and~~

(c) coverage for conversion of benefits required by 33-22-508 and 33-22-510 or by 33-30-1007;

and

(d) coverage for mammography examinations required by 33-22-132.

(2) The small employer carrier may determine varying levels of deductibles, copayments, maximum annual out-of-pocket expenses, maximum lifetime benefits, and other financial cost-sharing arrangements with the insured that give the basic health benefit plan a lower benefit value than the standard health benefit plan.

(3) A basic health benefit plan provided by a health maintenance organization or a basic health benefit plan with a restricted network provision must provide a comparable level of benefits to those required by subsections (1) and (2), as determined by the benefit equivalency and benefit value."

Section 6. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives may not be construed as a violation of any law relating to solicitation or advertising

1 by health professionals.

2 (3) A health maintenance organization authorized under this chapter may not be considered to be
3 practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

4 (4) The provisions of this chapter do not exempt a health maintenance organization from the
5 applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

6 (5) The provisions of this section do not exempt a health maintenance organization from material
7 transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization
8 must be considered an insurer for the purposes of 33-3-701 through 33-3-704.

9 (6) The provisions of this section do not exempt a health maintenance organization from the
10 requirements of [sections 1 and 2]."

11
12 NEW SECTION. Section 7. Codification instruction. (1) [Sections 1 and 2] are intended to be
13 codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part
14 1, apply to [sections 1 and 2].

15 (2) [Section 3] is intended to be codified in Title 37, chapter 3, and the provisions of Title 37,
16 chapter 3, apply to [section 3].

17 -END-

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

Call to Order: By CHAIRMAN STEVE BENEDICT, on February 14, 1997,
at 3:07 PM, in Room 410.

ROLL CALL

Members Present:

Sen. Steve Benedict, Chairman (R)
Sen. James H. "Jim" Burnett, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Sharon Estrada (R)
Sen. Eve Franklin (D)
Sen. Fred Thomas (R)

Members Excused: None

Members Absent: None

Staff Present: Susan Fox, Legislative Services Division
Karolyn Simpson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 324, SB 316, SB 317, SJ8,
2/10/97

Executive Action: SB 156, SB 162, SB 317,
SB 316, SB 324, SJ8, SB 90

EXECUTIVE ACTION ON SB 156, SB 162

Motion/Vote: SENATOR FRED THOMAS moved to take SB 156 and SB 162
OFF THE TABLE, convert them to regular status, and consider them
the next executive session. The motion CARRIED UNANIMOUSLY.

Discussion: SENATOR DOROTHY ECK said more amendments have been
prepared for SB 90.

CHAIRMAN BENEDICT said, because there are four bills to be heard
today, and when the committee gets to executive action again, she
can bring it up again.

SENATOR CHRIS CHRISTIAENS asked how many people would this bill affect.

SENATOR BARTLETT said there is only one now and maybe another later, but younger people are becoming judges and after 20 years they may want to retire, and still aren't age 65. The first instances identifying this problem are being seen, but it probably won't be a huge number of judges.

Closing by Sponsor: **SENATOR BARTLETT** made no further remarks.

Close hearing: 3:16 PM

HEARING ON SB 324

Sponsor: **SENATOR SHARON ESTRADA, SD 7, Billings**

Proponents: Rep. Deb Kottel, HD 45, Great Falls
Dr. Nancy Etchart, Licensed Clinical Psychologist
Kate Cholewa, MT Womens Lobby
Claudia Clifford, Auditors Office
Beda Lovitt, MT Medical Assn.
Steve Yeakel, Council Maternal and Child Health
Barbara Booher, MT Nurses Assn.
Rep. Diane Sands, HD 66, Missoula
Tanya Ask, Blue Cross and Blue Shield
Tom Ebzery, Yellowstone Community Health Plan
Don Allen, MT Medical Benefit Plan
Lois Fitzpatrick, self
Mary Alice Cook, Advocate for Children and Families

Opponents: None

Opening Statement by Sponsor:

SENATOR SHARON ESTRADA, SD 7, Billings, said SB 324 is an act providing for coverage of postmastectomy care as determined by the physician and patient, reconstructive surgery, requiring written informed consent for patients receiving treatment for breast cancer, and clarifying the small employer health insurance availability act for coverage of mammography. Some insurance companies want to send women home 24 to 48 hours after a mastectomy. **SENATOR ESTRADA** said, based on her own experience, the length of hospital stay should be the decision of the woman. Because this surgery can be devastating, some women choose to have reconstructive surgery and should be allowed to have this surgery and have it paid for by her insurance. Written informed consent for breast cancer treatment is essential because a patient is so afraid, she may not be listening to the doctor and be able to make a decision at that time. She gave the 1994 statistics from the American Cancer Society and the American Society of Plastic Surgeons. Nationally, there were 85,000 mastectomies performed and 29,000 (34%) of these had reconstructive surgery. Those who chose to have reconstructive surgery is broken down by age groups as follows:

18 years and under = 1%
17-34 years of age = 11%
35-50 years of age = 54%
51-64 years of age = 29%
65+ years of age = 5%

Most health insurance policies cover mastectomies, but there is no pattern of coverage for reconstructive surgery. Some have coverage and others don't. There will be an amendment setting the effective date.

Proponents' Testimony:

REP. DEB KOTTEL, HD 45, Great Falls, said when she was 36 years old she found a lump and insisted on having a mammogram. She had a biopsy which determined the lump was malignant and the cancer had spread to her lymph nodes. After surgery, she spent four days in the hospital and immediately started chemotherapy, which continued for the next six months. Each woman's mastectomy is different and each deals with it differently. She couldn't imagine going home 48 hours after surgery because she was barely able to cope with the situation after four days in the hospital. Every woman should be able to choose whether she would like to have reconstructive surgery.

Dr. Nancy Etchart, Licensed Clinical Psychologist, said she is a three-time cancer survivor and supports both SB 324 and SJR 8. She read a letter from Christy Hutchins. (EXHIBIT 1)

Kate Cholewa, Montana Womens Lobby, said every 11 minutes three women die to breast cancer and men can also suffer from breast cancer. (EXHIBIT 2)

Claudia Clifford, State Auditors Office, said consumers are getting nervous about the quality of health care and insurance coverage for that care. Their office has an occasional complaint regarding reconstructive surgery because some companies refuse to cover it, but others do provide coverage. She read a letter from Dr. John Harlan. (EXHIBIT 3) In statute, there was a mandated benefit for mammography but the last legislature chose to exempt the small group policies. The Insurance Commissioner feels a mandated benefit should apply to all policies without exemptions for some.

Beda Lovitt, Montana Medical Association, said SB 324 is good medicine which the doctors recognize. The length of the hospital stay should be decided by the patient and her physician. It can vary with the individual. The reconstructive surgery is an important issue and the woman should be able to choose that option. Written informed consent is good medicine. Good physicians practicing good medicine should be doing that.

Steve Yeakel, Montana Council Maternal and Child Health, Montana Public Health Association, said there is strong support in Montana children's agenda for breast and cervical issues and

urged the committee's support of SB 324 because it will improve the outcome and make for healthier families later in life.

Barbara Booher, Montana Nurses Association, said they support SB 324. There are too many families touched by breast cancer.

REP. DIANE SANDS, HD 66, Missoula, said she supports this bill and became involved in this issue when a constituent, who is a breast cancer survivor, asked her to get involved. This is a critical issue for womens' health care and is cost effective.

Tanya Ask, representing Blue Cross and Blue Shield, said they cover reconstructive surgery and have added reduction of the non-diseased breast. They have a question about augmentation because in the past that has been considered to be a cosmetic procedure. They are offering an amendment regarding the effective date.

(EXHIBIT 4) There are a number of provisions going through both the Senate and the House impacting insurance contracts, all of which need to be filed with the Montana Insurance Department then reissued to individuals who have that coverage. Most of these bills will have a January 1, 1998 effective date and would like SB 324 to do the same. She offered comments from **Tom Hopgood, Health Insurance Association of America**, in support of SB 324. Many of the companies he represents offer these services including reconstruction and reduction of the non-diseased breast. He questions the additional mammogram exams under the basic health benefit plan from the policy decision made last session, which is the issue of mandated benefits. While all are good benefits, he questions whether people should have the right to choose those benefits. He said all health plans should be regulated by the State of Montana, not just insured plans, but also any multi-employee welfare arrangements, and political subdivision or state entity, such as the Montana State Benefit plan, Montana University system or any other governmental entity over which the State has jurisdiction, and this particular language should be incorporated into those contracts.

Tom Ebzery, Yellowstone Community Health Plan, said they support SB 324. Their health plan does offer this coverage and thinks it's good addition for public policy. They approve of the January 1 effective date and, referring to page 1, line 16, medically appropriate, he suggested striking the word "appropriate" and insert "necessary," because there might be a question what "medically appropriate" really means. He has a question on page 1, lines 15-16 "care for a period of time as determined by the attending physician, in consultation with the patient," and thinks the insurer should be included in this list.

Don Allen, Montana Medical Benefit Plan, said they support SB 324 and endorse the January 1 effective date. This is an important type of coverage but thinks, in regard to the basic plan, it is a way to hold down insurance coverage costs for some people and he supports the Hopgood amendment to extend it to the other medical coverage.

{Tape: 1; Side: B; Approx. Time Count: 3:49 PM}

Lois Fitzpatrick, self, said she supports SB 324. She is a breast cancer survivor and urged passage of the bill.

Mary Alice Cook, Advocate for Children and Families, said she is a breast cancer survivor and supports SB 324.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR LARRY BAER asked if women are really discharged 48 hours after a radical mastectomy. He had been an operating room technician in the Navy and assisted in some mastectomies, and can't believe women are discharged so soon after surgery.

Kathleen Martin, Department of Health, said she had a radical mastectomy at 5:00 PM one day and was sent home at 10:00 AM the next day.

SENATOR FRED THOMAS asked if she was covered under the State plan at that time.

Kathleen Martin replied that it was.

Closing by Sponsor:

SENATOR SHARON ESTRADA expressed her appreciation to all the proponents who came to testify in support of SB 324.

Close hearing: 3:54 PM

HEARING ON SJR 8

Sponsor: SENATOR SHARON ESTRADA, SD 7, Billings

Proponents: Rep. Diane Sands, HD 66, Missoula
Dr. Nancy Etchart, Licensed Clinical Psychologist
Kathleen Martin, Department of Health
Steve Yeakel, Council Maternal and Child Health

Opponents: None

Opening Statement by Sponsor:

SENATOR SHARON ESTRADA, SD 7, Billings, said SJR 8 is a resolution urging the U.S. Congress to provide annual screening mammograms for those women who qualify for Medicare. Presently Medicare only pays for one mammogram every two years. Her oncologist asked her to initiate this coverage because most women on Medicare can't afford the cost of an annual mammogram. Women who are over 65 years of age need them the most but can only have one mammogram every two years under Medicare. 78% of women with breast cancer are over the age of 50. If this bill passes both the Montana Senate and House, it will be sent to Montana congressional delegation in Washington DC, to the Department of

SENATE HEALTH & WELFARE

EXHIBIT NO. 1DATE 2/14/97BILL NO. SB 324**CHRISTY HUTCHINS****718 Clark Avenue - Billings, MT 59101 - (406) 245-7198**

February 14, 1997

Montana State Senate
Public Health, Welfare, and Safety Committee
Helena, Montana 59601

RE: Senate Bill 324

Dear Mr. Chairman and Committee Members:

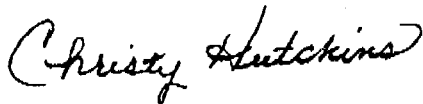
I am no stranger to breast cancer and resulting surgery. Only a year after my mother died from breast cancer, my best friend was diagnosed. Her surgery left her weak and recuperation was slow. She was hospitalized for over a week post-surgery, and several weeks of recuperation followed. Surgical drain tubes required daily attention to prevent infection.

I have seen this disease up close and personal, and I can tell you unequivocally that it has far reaching effects. The psychological impact is devastating--it impacts the woman, her family, and her friends. Months of painful chemotherapy and constant fear of recurrence is its legacy.

Rising medical costs and high insurance rates definitely require careful consideration and creative solutions. Allowing for-profit insurance companies to make these decisions and dictate appropriate medical treatment, however, is not the answer. Only a medical professional, in consultation with the woman, should be allowed to set the course of treatment.

I strongly support passage of Senate Bill 324. Thank you for your consideration.

Respectfully submitted,



Christy Hutchins



Aesthetic Plastic Surgery Center

Mark O'Keefe, Insurance commissioner
126 N. Sander Mitchell Building Rm 270
Helena, MT 59604

SENATE HEALTH & WELFARE

EXHIBIT NO. 3

DATE 2/14/97

BILL NO. SB 324

John W. Harlan
M.D., F.A.C.S.

Aesthetic, Plastic & Reconstructive Surgery

Cosmetic Surgery, Maxillofacial Surgery,
Surgery of the Hand, Laser Surgery,
Microvascular Surgery and Skin Care

Diplomate American Board of Surgery

Dear Mr. O'Keefe:

It has come to my attention that patients of mine being treated for breast cancer have been denied insurance reimbursement for breast reconstruction. These women often have great psychological depression due to the loss of a breast, which has been recommended as the appropriate and best treatment regimen for treating their breast cancer. When I consult with these women, I spend a great deal of time at the initial consultation explaining in detail the various procedures available for breast reconstruction and then performing a detailed examination in order to see which breast cancer reconstructive procedure would be best for them.

It has been my understanding that it has been determined that breast reconstruction is an appropriate reimbursable procedure by most insurance companies, including state funded Medicaid programs and federally funded Medicare insurance. Would you please give me what information you have available as to the appropriateness of reimbursement or the appropriateness of denial of these claims for these women?

It is my personal opinion that denial of these claims for a reconstructive procedure, which is not a cosmetic procedure is a discriminatory practice against these women. In my experience, I have found breast reconstructive procedures to be very beneficial to the overall psychological state of well being for these women and it enhances their ability to participate in physical activities without the fear of being noticed as a patient who has had a breast removed and they look more natural in clothing and swim suits than women who have not had reconstruction of the breast.

Medical conditions which are prevented include, neck pain, back pain, scoliosis, and rotatory scoliosis of the spine, to list a few.

If you desire further information from me, please do not hesitate to contact me. I will eagerly await your reply.

Sincerely,


John W. Harlan M.D., F.A.C.S.
JWH/dhm

HELENA, MONTANA

MAY 21 9 52 AM '96

SB 324

Proposed Amendments

Tanya Ask, Blue Cross and Blue Shield of Montana
February 14, 1997

1) Page 4, line 18

Insert: NEW SECTION. **Section 7. Effective Date.** This act
is effective for contracts issued or renewed on and after January
1, 1998.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON HUMAN SERVICES

Call to Order: By CHAIRMAN DUANE GRIMES, on March 14, 1997, at
3:00 P.M., in ROOM 104.

ROLL CALL

Members Present:

Rep. Duane Grimes, Chairman (R)
Rep. Loren L. Soft, Vice Chairman (Majority) (R)
Rep. Carolyn M. Squires, Vice Chairman (Minority) (D)
Rep. Darrel Adams (R)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. John C. Bohlinger (R)
Rep. Deb Kottel (D)
Rep. Billie Krenzler (D)
Rep. Brad Molnar (R)
Rep. Wes Prouse (R)
Rep. Diane Sands (D)
Rep. Bruce T. Simon (R)
Rep. Liz Smith (R)

Members Excused: Rep. Carey

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Jaelene Racicot, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 378, SB 324, SJR 8
Executive Action: SJR 8 DO CONCUR IN 11-0

HEARING ON SJR 8

Opening Statement by Sponsor:

REP. DIANE SANDS, HD 66, introduced the bill. {Tape: 1; Side: A;
Approx. Time Count: .2.}

Proponents' Testimony:

Kate Cholewa, Montana Women's Lobby. {Tape: 1; Side: A; Approx. Time Count: 1.4.}

Lois Fitzpatrick, self. {Tape: 1; Side: A; Approx. Time Count: 1.6; Comments: See EXHIBIT 1.}

Steve Yeakel, Montana Council for Maternal Health and the Montana Children's Alliance. {Tape:1; Side: A; Approx. Time Count: 3.2.}

Jerry Loendorf, Montana Medical Association. {Tape: 1; Side: A; Approx. Time Count: 3.8.}

Nancy Ellery, Department of Public Health and Human Services. {Tape: 1; Side: A; Approx. Time Count: 4.0.}

Opponents' Testimony:

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

REP. SANDS closed. {Tape: 1; Side: A; Approx. Time Count: 4.9.}

EXECUTIVE ACTION ON SJR 8

Motion/Vote: REP. BOHLINGER MOVED DO CONCUR IN. THE MOTION CARRIED 11 - 0. REP. SANDS AGREED TO CARRY SJR 8 ON THE HOUSE FLOOR. {Tape: 1; Side: A; Approx. Time Count: 5.9.}

HEARING ON SB 324

Opening Statement by Sponsor:

SEN. SHARON ESTRADA, SD 7, introduced the bill. {Tape: 1; Side: A; Approx. Time Count: 7.6.}

Proponents' Testimony:

Kate Cholewa, Montana Womens Lobby. {Tape: 1; Side: A; Approx. Time Count: 16.7; Comments: See EXHIBIT 2.}

Lois Fitzpatrick, self. {Tape: 1; Side: A; Approx. Time Count: 18.8; Comments: See EXHIBIT 3.}

Gloria Paladichuk, self. {Tape: 1; Side: A; Approx. Time Count: 20.8.}

Claudia Clifford, State Auditor's Office. {Tape: 1; Side: A; Approx. Time Count: 22.7.}

Tanya Ask, Blue Cross/Blue Shield. {Tape: 1; Side: A; Approx. Time Count: 24.4.}

Steve Yeakel, Montana Council for Maternal Health and the Montana Children's Alliance. {Tape: 1; Side: A; Approx. Time Count: 25.3.}

Jerry Loendorf, Montana Medical Association. {Tape: 1; Side: A; Approx. Time Count: 26.2.}

REP. Bruce Simon, HD 18. {Tape: 1; Side: A; Approx. Time Count: 27.1.}

Ed Grogan, Montana Medical Benefit Plan. {Tape: 1; Side: A; Approx. Time Count: 29.3.}

Opponents' Testimony:

None

Questions From Committee Members and Responses:

{Tape: 1; Side: A; Approx. Time Count: 29.9.}

Closing by Sponsor:

SEN. ESTRADA closed. {Tape: 1; Side: B; Approx. Time Count: 21.2.}

REP. GRIMES read a letter from the Department of Public Health and Human Services regarding the testimony by a proponent to HB 386.

REP. KOTTEL asked REP. GRIMES about the Drake amendment and why it was raised during the hearing on SB 324.

David Niss answered REP. KOTTEL'S concern on the Drake amendment.

HEARING ON SB 378

Opening Statement by Sponsor:

SEN. STEVE BENEDICT, SD 30, introduced the bill. {Tape: 2; Side: A; Approx. Time Count: 0.}

Proponents' Testimony:

TESTIMONY FOR SJR 8

EXHIBIT 1
DATE 3-14-97
SB SJR 8

Mr. Chairman and members of the committee, my name is Lois Fitzpatrick and I am a breast cancer survivor. My breast cancer was discovered just before my 43 birthday less than 2 years ago. I was not in a high category risk, so I had mammograms every other year. I speak today to urge you to pass SJR 8 to request the Federal Government to change the coverage requirement for Medicare to allow women over the age of 65 to receive annual mammogram screening. The American Cancer Society has stated that women over the age of 50 should have annual screenings. Why shouldn't those over the age of 65 and on Medicare not have the complete coverage?

I, as a survivor, have mammograms every six months. I make and keep these appointments as if my life depended on them. It does. Last week I was informed by the hospital that there is a lump in the same breast that I had cancer in 2 years ago. Next Tuesday I will have a surgical biopsy to see if it is scar tissue or if the cancer has returned. I would not know about this except for the mammogram. What are we condemning women over the age of 65 to if a growth can be found within 6 months in me and these women have to wait 2 years.

I urge you to support and pass this resolution.

Thank you.

Lois A. Fitzpatrick
1308 Shirley Road
Helena MT 59602
458-6129 (h)
447-4341 (w)
447-4525 (f)
lfitzpat@carroll.edu (email)

EXHIBIT 2
DATE 3-14-97
\$ 324

MONTANA WOMEN'S LOBBY

P . O . B O X 1 0 9 9 H E L E N A , M T 5 9 6 2 4 4 0 6 . 4 4 9 . 7 9 1 7

To: House Health and Human Services
From: Kate Cholewa, Montana Women's Lobby
Re: SB 324, SJ 8, Support

Every 11 minutes, another woman dies of breast cancer. One in eight women will get breast cancer in their lifetimes. In 1991, breast cancer ranked just behind lung cancer as the leading cause of cancer death for all women. Numbers such these clearly demonstrate the magnitude of breast cancer and why it is of enormous concern to women that breast cancer detection and care are accessible.

A mastectomy can take a great physical and emotion toll on a woman and her family. Allowing a woman and her physician determine the appropriate postmastectomy care only makes sense. It allows the individual circumstances to dictate care, and many insurance companies in Montana agree that this is they way is should be. Depending on the woman, her health, her family, 24 hours of inpatient care may be sufficient; for others it may be an unreasonable hardship.

We also support section 2 of this bill requiring coverage for reconstructive breast surgery after a mastectomy. Such reconstructive surgery, for some women, is not "cosmetic", but is part of what is required for the woman to truly recover from breast cancer. For some women, the consequences of a loss of a breast exceed far beyond her physical health into her personal life and relationships. Her ability to work and care for her family, that is, heal, in some cases relies as much on reconstructive surgery, as it does on the mastectomy.

Section 3 of the bill is just good sense. Women need to know their options when facing this life-threatening circumstance and make decisions based on all the information available. Some doctors might have a way they "routinely" deal with breast cancer. A women must know more than what her own trusted doctor might routinely prescribe. They need to know all their options.

Finally, requiring coverage for mammographies makes good sense both for women's health and for economic reasons. Earlier detection leads to better outcomes for women. It saves lives. And early detection can lead to less radical medical care, which saves money.¹ Mammographies were originally left out of basic plans for small employers because of the small number of people these plans coverage. Now that the number has been expanded, mammographies must be included for the greater number of women now covered by these plans.

TESTIMONY FOR SB324

EXHIBIT 3
DATE 3-14-97
SB 324

Mr. Chairman and members of the committee, my name is Lois Fitzpatrick and I am a breast cancer survivor. I found my cancer less than 2 years ago. I had 2 surgeries within 5 days, followed by chemotherapy and radiation therapy. I consider myself fortunate in that I had physicians that kept me informed throughout and I was able to make decisions about my own treatment. Not everyone is that fortunate. I have spoken with women that really did not know what was happening to them and why. Informed consent is extremely important not just to treat the cancer, but to promote the emotional and spiritual healing that is so necessary with this disease.

I do want to urge you to make sure that the decision of how long a woman or man remains in the hospital following any form of surgery for breast cancer be the decision of the patient and the physician. I have a muscle disease that is very painful, the surgeon and my family physician were not sure what the effects of surgery would be on the disease. My surgeon told me that I would be able to remain in the hospital as long as I needed. The day after the second surgery, the case worker came into my room and told me that I would be release the next day. The day after surgery is when everything hit me emotionally. I was devastated, how could I go home. The case worker promised to contact the insurance company to additional time in the hospital. I did go home the next day. Ironically, two days after I went home, the insurance company sent me a letter to tell me that I was given an additional day in the hospital. Too little too late.

I urge you to support this bill and to vote yes.

Thank you
Lois A. Fitzpatrick
1308 Shirley Road
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458-6129 (h)
447-4341 (w)
447-4525 (f)
lfitzpat@carroll.edu (email)